country. I do not think the defendant has shown that in this case as discussed earlier on in this judgment.

Conclusions:

Accordingly I order that:

(i) the principal sum to be used in calculating interest is RM147,771.68;
(ii) the period of interest is to run from 15 February 1986 to 23 October 1989; and
(iii) the rate of interest is at 15% per annum on monthly rests.

Learned Counsel for the plaintiffs has also said during the hearing that there is a sum of RM78,675.32 deposited with the HSBC Finance Berhad by the Registrar of the High Court. Learned Counsel therefore applies that in the event of judgment being given in favour of the plaintiffs the said sum plus accrued interest should he paid out without the plaintiffs having to make another application. Having considered the application and as the judgment of this Court is in favour of the plaintiffs I grant the application of the learned Counsel for the plaintiffs and hereby order that the sum of RM78,675.32 together with all accrued interest, less any costs that may be due to the Court, be paid out to the plaintiffs upon the expiry of the appeal period and if there is no appeal.

I also order costs against the defendant to be taxed unless agreed by the parties.

KALWANT KAUR A/P RATTAN SINGH

v.

KEMENTERIAN DALAM NEGERI MALAYSIA & ANOR.

HIGH COURT, JOHOR BAHRU
TUAN HAIDAR BIN MOHD NOOR J.
[ORIGINATING SUMMONS NO. 24-921-91]
15 APRIL 1993

CONSTITUTIONAL LAW: Application for declaration that applicant is entitled to citizenship by operation of law - Whether the requirements of Article 14(1)(a) of Federal Constitution fulfilled.

The applicant who was born in Perak in 1942 applied for confirmation of her citizenship status on 16 November 1990 wherein she was informed that the status of her citizenship could not be confirmed. The applicant sought a declaration that she is a citizen or entitled to citizenship by operation of law relying upon Article 14(1)(a) of the Federal Constitution read together with paragraph 1(1)(a) of Part 1 of the Second Schedule and Article 124(1)(c)(ii) of the Federation of Malaya Agreement 1948 (FMA 1948).

The respondents opposed the application on the grounds that the applicants father was not a Federal citizen as at the date of her birth and relied upon Article 124(1)(f) FMA 1948. The respondents further relied on the fact that the applicant, by using an Indian passport, had deprived herself of the right to be a Federal citizen.

Held:

[1] The plaintiff has satisfied the requirements set out in Article 14(1)(a) of the Federal Constitution read with Article 124(1)(c)(ii) of the FMA. The facts show that as at the date of her birth, the plaintiff was a British subject as her father was a British subject and she was born in one of the territories comprised in the Federation, Perak, and her father was a permanent resident of Perak. The plaintiff is entitled to a declaration that she is a citizen by operation of law.

[2] The plaintiff's status as a Federal citizen was still unascertained and as such the question of the plaintiff depriving herself of citizenship did not arise as yet.

[Plaintiff's application for declarations allowed with costs].

Cases referred to:
Mohan Singh v. Attorney General [1987] 2 MLJ 595 ***(dist)***
J. Annathurai v. Attorney General [1987] 2 MLJ 585 ***(dist)***
Datuk Syed Kechik v. Government of Malaysia & Anor. [1979] 2 MLJ 101 ***(refd)***

Legislation referred to:
Federal Constitution Article 14(1)(a), 15
Federation of Malaya Agreement 1948, Article 124(1)(c)(ii), (f), (3)(c), 125(1)(a)(ii)
British Nationality Act 1948

Other sources referred to:
Halsbury's Laws of England, 4th Edn., para 54
Report of the Federation of Malaya Constitutional Commission 1957, para 52

For the plaintiff - G.S. Nijar (H.S. Tan with him); M/s. Nijar & Nijar
For the defendants - P.F. Vong; Attorney General's Chambers

JUDGMENT

Haidar Bin Mohd Noor J:
In this originating summons, the plaintiff, Kalwant Kaur seeks a declaration that she is a citizen or entitled to citizenship of Malaysia. The plaintiff filed an affidavit (enclosure 2) in support of her summons. In paragraph 11 of her affidavit, the plaintiff stated therein Article 15 of the Federal Constitution ('the Constitution') to support her summons whereas it would appear to be an error as Article 14 would seem to be the proper Article as the plaintiff deposed therein that the Article is to be read with the provisions contained in Part I of the Second Schedule to the Constitution. Article 14 relates to citizenship by operation of law as is the contention of the plaintiff, whereas Article 15 relates to citizenship by registration in respect of wives and children of citizens. In this originating summons the plaintiff is relying specifically on Article 14(1) (a) of the Constitution.

The following facts, in so far as relevant, are not disputed:

(a) The plaintiff was born in Kupisan Tambun, Perak in 1942 (see exhibit 'KK1')
(b) The plaintiff had a red identity card No. 7781921 (see exhibit 'KK4').
(c) Rattan Singh s/o Bhagwan Singh is the father of the plaintiff and he was born in 1910 in India in Lahore, State of Punjab (see exhibit 'RS1').
(d) At the date of birth of the plaintiff or thereafter the plaintiff's father had resided continuously for more than 15 years in Perak.
(e) The plaintiff's father is a citizen by registration in 1951 pursuant to Article 125(1) (a) (ii) of the Federation of Malaya Agreement, 1948 ("FMA") (see exhibit 'KK2').

According to the defendants (enclosure 7) the plaintiff made an application for confirmation of her citizenship status on 16 November 1990 (see exhibit 'AY-1') and the plaintiff was informed through her solicitors that the status of her citizenship could not be ascertained (see exhibit 'AY-2'). She was accordingly advised to apply for citizenship under the appropriate Article at the nearest Registration Office. It is not clear as to whether the plaintiff did apply or not for citizenship as advised before filing the present originating summons.

Be that as it may, the issue is centered on the application of the laws that are relevant to the facts of her case.

Article 14(1)(a) of the Constitution reads:

> Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
>
> (a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part 1 of the Second Schedule; and ...

The plaintiff was born before Malaysia day and the relevant provision would seem to have been satisfied. The next question to consider is whether she is a citizen by virtue of the provisions contained in Part 1 of the Second Schedule to the Constitution. She is relying on paragraph 1(1) (a) of Part 1 of the Second Schedule which reads:

> Subject to the provisions of Part III of this Constitution and anything done there under before Malaysia Day, the following persons born before Malaysia Day are citizens by operation of law, that is to say:
>
> (a) every person who immediately before Merdeka Day, was a citizen of the Federation by virtue of **any** of the provisions of the Federation of Malaya Agreement 1948, whether by operation of law or otherwise;

It is then pertinent to examine the relevant provisions of the FMA. The plaintiff is relying on Article 124(1)(c)(ii) of FMA which reads:

> On and after the appointed day, the following persons shall be Federal Citizens:
>
> (a) ...
> (b) ...
> (c) Any British subject born before, on or after the appointed day, in any of the territories now to be comprised in the Federation, whose father either:
>
> (i) ...; or
> (ii) was or is, at the date of the birth of such British subject, or thereafter became or becomes, permanently resident in such territories;

The appointed day is 1 February 1948.

From what could be gathered from exhibit AY-3 the defendants were of the view that since the plaintiff was born in Persekutuan Tanah Melayu, that is, in the State of Perak on 28 August 1942 the relevant law applicable to her case for citizenship would be Part XII of FMA. However, I am inclined to believe that without properly ascertaining the facts of the plaintiff's case the defendants made the observation that her citizenship status could be confirmed under Article 124(1)(f) of Part XII of FMA. According to the defendants, as at the time of the plaintiff's birth her father was not a citizen until later on in 1951, the plaintiff could not therefore claim to be a citizen by operation of law. It is to be noted, however, that the plaintiff is not relying on Article 124(1)(f) of FMA at all. She is relying on Article 124(1)(c)(ii) of FMA and contended that she satisfies the requirements of the said provision and therefore is entitled to be a citizen by operation of law. In the circumstances I need to consider whether the plaintiff has satisfied the requirements of Article 124 (1) (c) (ii) of FMA and if so, then when read with Article 14(1)(a) of the Constitution, could she then properly be entitled to get a declaration that she is a citizen or entitled to citizenship of Malaysia by operation of law?

The first question is whether the plaintiff was a British subject at the time of her birth, that is, in 1942, as envisaged by Article 124 (1) (c) (ii) of FMA.? That she was born in Perak, one of the territories comprised in the Federation, is not disputed. In this respect guidance may be sought from 'Report of the Federation of Malaya Constitutional Commission 1957' where at paragraph 52 it is stated:

> A child born in a foreign country is a British subject if his father was a British subject by birth but not if his father was only a British subject by descent unless his birth was registered in accordance with the provisions of the Act of 1948 (referring to the British Nationality Act 1948). The Malay States are not foreign countries for the purpose of this distinction because they are places where by treaty capitulation grant usage sufferance or other lawful means the Crown exercised jurisdiction over British subjects. So a person residing in a Malay State may be a citizen of the United Kingdom and Colonies though his ancestral connection with British territory is remote.

The next question to consider is whether the plaintiff's father was a British subject at the time of her birth in 1942? That the plaintiff's father was born in India in 1910 in Lahore, Punjab is not disputed (see enclosure 11). He acquired Federal citizenship by registration only in 1951 (see exhibit 'KK2'). What then was the status of the plaintiff's father in 1942? It would appear that he was without citizenship of any country, though he could potentially be a citizen of India as it is not disputed that Punjab was part of India and that India was under the British at the material time. However, for the purposes of British nationality law no citizenship law came into force in India, so that potential citizens of India remained British subjects without citizenship unless they acquired some other nationality. India had its own citizenship law of course, but only laws designated by the Secretary of State fulfilled the definition of 'citizenship law' for the purposes of British nationality and no such designation was ever made in the case of India. (see paragraph 54 of **Halsbury's Laws of England**, 4th Edn.). The Indian citizenship laws only came into existence on 26 November 1949, that is, on the day the constitution was passed. As at 1942 it would appear that the plaintiff's father was a British subject until he obtained Federal Citizenship by registration under Article 125 (1) (a) (ii) of FMA in 1951.

I, next have to consider the issue of "permanently resident in such territories", that is, Perak under Article 124(1)(c)(ii) of FMA. "Permanently resident" under Article 124(3)(c) of FMA states that a person shall be deemed to be "permanently resident" in the territories now to be comprised in the Federation who has completed a continuous period of fifteen years residence in any or more of them, whether such period be completed before, on or after the appointed day, that is, 1 February 1948. Article 124(1)(c)(ii) of FMA would seem to have been satisfied otherwise the plaintiff's father would not be granted citizenship by registration under Article 125(1)(a)(ii) of FMA, as residence is one of the essential requirements for citizenship by registration. In any event, the fact pertaining to the period of the plaintiff's fathers's residence in Perak would appear to be not seriously disputed by the defendants except that the defendants asserted that he was not a Federal citizen at the date of birth of the plaintiff in 1942.

In a nutshell, the facts show that as at the date of her birth the plaintiff was a British subject as her father was a British subject and she was born in one of the territories comprised in the Federation, that is Perak and further her father was a permanent resident of Perak. It would seem clear that the plaintiff has satisfied the requirements set out in Article 14(1)(a) of the Constitution read with Article 124(1)(c)(ii) of the FMA for her to seek a declaration that she is a citizen or entitled to Federal citizenship by operation of law. The defendants opposed this originating summons by going on the wrong premises, that is, relying on Article 124(1)(f) of FMA, saying that her father is not a Federal citizen as at the date of her birth, that is, 1942. Further, the learned Federal Counsel for the defendants relied on the cases of *Mohan Singh v. Attorney General* [1987] 2 MLJ 595 and *J. Annathurai v. Attorney General* [1987] 2 MLJ 585, both Singapore cases, to say that by the plaintiff using an Indian passport, she had deprived herself of her right to be a Federal citizen. However, in the Singapore cases, orders for termination of citizenship were made whereas in the present case the plaintiff's status as a Federal citizen is still unascertained and therefore the question of deprivation of her citizenship does not arise as yet. In any event if she succeeds in getting the declaration of her status as a Federal citizen, it is still within the discretion of the defendants to invoke the powers vested in them by subsequently making an order to deprive her of the citizenship if satisfied that by her conduct of using the Indian passport she had voluntarily claimed and exercised rights available to her under the laws of India, being rights accorded exclusively to citizens of India.

I am of the opinion that the plaintiff has satisfied the requirements of the relevant provisions of the laws relating to citizenship by operation of law. In the circumstances, this is a proper case where I should allow the declaration sought by the plaintiff in this originating summons and I do so declare accordingly. (see *Datuk Syed Kechik v. Government of Malaysia & Anor.* [1979] 2 MLJ 101). Costs of this originating summons to the plaintiff.